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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Proposed Revision of Section 69.605 of the Commission's Rules to Allow Small Cost Settlement Companies to Elect Average Schedule Settlement Status	)	RM-8357

SUPPORTING COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits these comments in support of the Petition for Rulemaking filed by the National Exchange Carrier Association, Inc. (NECA).

NECA petitioned the Commission to institute a rulemaking proceeding to revise Section 69.605(c) of the Commission's Rules, 47 C.F.R. § 69.605(c). That rule section currently restricts average schedule settlement methods to only those exchange carriers that were "participating in average schedule settlements on December 1, 1982."[1] NECA requested that small local exchange carriers (LECs) be permitted to elect average schedule status on December 31, 1993, for an effective date of July 1, 1994. After July 1, 1995, exchange carriers with study areas under 10,000 access lines should be allowed to convert to average schedules upon 60 days' notice. The 10,000 access line restriction

[1] 47 C.F.R. § 69.605(c).

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would apply separately to each study area, regardless of company affiliation.

Additionally, NECA proposed that any average schedule company electing to convert to cost settlements after the initial implementation date of July 1, 1994 should remain as cost companies for four years before they are permitted to convert back to average schedule status.

I. CHANGES IN CIRCUMSTANCES JUSTIFY A GENERAL METHOD FOR CONVERSION TOAVERAGE SCHEDULE WHICH WILL SIGNIFICANTLY REDUCE REGULATORY BURDENS ON SMALL CARRIERS

Section 69.605(c) permits companies to convert from average schedule to cost company status, but not vice versa.[2] Notwithstanding the strictures of this rule section, however, the Commission has correctly recognized that there may be changes in circumstances that would warrant cost companies conversion to average schedule treatment.[3] Thus, the Commission has, from time to time, granted waivers to carriers to convert from cost company to average schedule status if it found that the public interest would be served.[4]

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[2] See MTS/WATS Structure, Report & Order, 103 FCC 2d 1017, 1026 (1986).

[3] In addition to the December 1, 1982 conversion date, the Commission had allowed LECs with 5,000 or fewer lines a one-time opportunity to elect to be compensated under interstate average schedules. That opportunity expired on August 1, 1987. See Proposed Waiver of Section 69.605(c) of the Commission's Rules, CC Docket No. 78-72, 2 FCC Rcd. 39960 (1987) at ¶ 5.

[4] See e.g. Washington County Rural Telephone Cooperative, Order, DA 91-1693, rel. December 16, 1992; NECA's Proposed Waiver of Section 69.605(c) of the Commission's Rules, CC Docket No. 78-72, Phase I, Order, 2 FCC Rcd 3960 (1987) and Petitions Seeking Average Schedules Settlements for Affiliated Cost Companies, Order, 3 FCC Rcd 6003 (1988).

In a 1992 Order approving the modifications to the average schedule formulas proposed by NECA, the Commission declined to adopt a general approach allowing small cost companies to convert to average schedule even though the past infirmities associated with average schedule have since been rectified. Rather, the Commission invited parties seeking to modify Section 69.605(c) to file a petition for rulemaking.[5]

It is indisputable that circumstances have drastically changed since divestiture. One of these changes is that most states do not now require small carriers to perform intrastate separations studies to determine jurisdictional costs. Thus, for carriers to conduct cost studies solely for interstate purpose would not only be expensive, but an unnecessary and time-consuming burden that invariably increases the operating costs for the carriers involved. This in turn puts upward pressure on local rates.[6]

In June, 1993, the Commission released a Report and Order providing optional incentive regulations for a group of approximately 1,300 small and mid-size non-price cap LECs. The Commission offered a package of three regulatory alternatives that small and mid-size cost companies could use to succeed in a new and evolving telecommunications marketplace; and at the same time provide incentives for high quality service and efficiency, and at reasonable costs to ratepayers. The Commission reasoned that these optional regulatory plans are more attuned to the changing

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[5] See NECA Proposed Modifications to the Interstate Average Schedules, Memorandum Opinion and Order, DA 92-843, rel. June 25, 1992 at ¶¶ 14-15.

[6] NECA at 2. NECA estimates that had average schedule companies performed cost studies in 1993, they would have incurred about $16 million in expenses. Id. This additional expense would undoubtedly put upward pressure on local rates.

environment and to the carriers' diverse needs.[7]

From the small carriers' standpoint, the average schedule method also represents a form of streamlined regulation that creates economic incentives, and enables them to retain the benefits that accrue from increases in productivity and reductions in expenditures so that they can operate more efficiently. It closely simulates cost company settlements and reflects their interstate access costs and separations procedure. For the same reason that the Commission allowed the non-price cap carriers to choose among one of the three optional incentive regulation plans, the Commission should provide them with a further, legitimate incentive option: the ability to convert back to the average schedule method should they elect to do so, and within appropriate guidelines.

II. A FOUR-YEAR PERIOD OF COST COMPANY STATUS COMMITMENT BEFORE RETURNING TO AVERAGE SCHEDULE STATUS IS REASONABLE

NECA proposed that any average schedule company electing to convert to cost settlements after the initial implementation date of July 1, 1994 would not be allowed to convert back to average schedule status for four years. NECA argued that it would not be desirable to prohibit a cost company from returning to average schedule status simply because they had once chosen to forego the average schedule settlement method.[8]

USTA agrees that the four-year cost status commitment period is sound and should be enforced. The Commission has previously stated that it would not offer an

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[7] See Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, CC Docket No. 92-135, 8 FCC Rcd 4562 (1993).

[8] NECA at 5-6.

unlimited opportunity for cost companies to elect average schedule treatment because those carriers should not receive the resulting windfall if they were permitted to depreciate their plant to the "cross-over" point and then convert to average schedule treatment when plant investment diminishes.[9]

While this Commission concern may hypothetically be true for some carriers whose depreciable assets are closer to the cross-over point to reap a windfall by converting back to average schedule status, it is definitely not true for all carriers, particularly those who have made new plant investments shortly after they become cost companies. Those new plant investments take years to depreciate under the Commission's Part 32 depreciation rules. Hence, it is not possible that those cost companies with relatively new investments could even come close to the cross-over point where converting back to average schedule would engender an economic windfall.

Moreover, the four-year period is consistent with the Commission's statement in permitting carriers electing an optional incentive plan to remain in the plan for four years, or two tariff periods. The Commission stated that four years is the minimum allowable period for participation in an incentive plan, and carriers seeking to exit the plan must provide notice to the Commission two years before exiting the plan.[10]

The four-year period is also a reasonable time frame for cost companies to adjust to the cost methodology and settlement. Nonetheless, as circumstances change, they

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[9] See Proposed Waiver of Section 69..605(c) of the Commission's Rules, CC Docket No. 78-72, 2 FCC Rcd. 39960 (1987) at n.3.

[10] See Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, supra, at ¶ 70.

should be granted the flexibility to return to average schedule should they elect to do so after four years. As average schedule companies, they may have a higher incentive to cut costs and operate more efficiently than as cost companies. This benefit would enhance productivity and customer satisfaction.

III. CONCLUSION

In light of the foregoing, USTA respectfully requests that the instant petition for rulemaking be granted.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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November 1, 1993

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on November 1, 1993 copies of the Supporting Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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